

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 90419-001-SF

v

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 14th day of August 2008
by Ken Ross
Commissioner

ORDER

I

PROCEDURAL BACKGROUND

On June 17, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the material submitted and accepted the request on June 25, 2007.

As required by Section 2(2) of Act 495, the Commissioner conducts this external review as though the Petitioner were a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

Because the appeal involved medical issues, the Commissioner assigned the case to an independent review organization (IRO), which provided its recommendations to the Commissioner on July 11, 2008.

II

FACTUAL BACKGROUND

The Petitioner is enrolled for health coverage with XXXXX, a self-funded group. Blue Cross

Blue Shield of Michigan (BCBSM) administers the plan. Her health care benefits are governed by the terms of the Community Blue Group Benefits Certificate (certificate).

The Petitioner received a surface electromyography (SEMG) on October 22, 2007, as part of her treatment for severe jaw joint problems. The charge for the SEMG was \$495.00. BCBSM denied coverage for it because it believes the SEMG is experimental or investigational.

The Petitioner appealed BCBSM's denial of coverage for the SEMG. After a managerial-level conference, BCBSM did not change its decision and issued a final adverse determination dated April 17, 2008.

III ISSUE

Did BCBSM properly deny coverage for the Petitioner's SEMG provided on October 22, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner's dentist indicated that the SEMG studies the function of the muscles of the jaw, face, and neck through the recording of electrical charges. It identifies muscle dysfunction and is used to determine how this affects the bite and position of the teeth.

The Petitioner discussed BCBSM's rejection of the SEMG exam with her dentist. According to the Petitioner, her dentist said he had never heard of an SEMG not being covered by BCBSM, that the procedure has been used in dentistry for 40 years. The Petitioner does not understand how a test that has been used for so long can still be considered experimental or investigational.

The Petitioner argues that her SEMG is not experimental or investigational and is a covered benefit under her certificate. She believes that BCBSM is required to pay for this test.

BCBSM's Argument

Section 4 of the certificate establishes that experimental treatment is not a payable benefit.

In Section 6 (page 6.3) the certificate further states:

The BCBSM medical director is responsible for determining whether the use of any service is experimental.

BCBSM's medical policy explains that SEMG is typically used to investigate electrical functioning of nerves and muscles. SEMG is a method used in the evaluation of neuromuscular disorders that uses surface electrodes to evaluate activity of muscles. SEMG has been promoted as a non-invasive modality in preference to invasive needle electromyography. However, BCBSM's medical policy says:

SEMG, however, has limited spatial resolution that results in poor recordings of high-frequency signals such as polyphasic potentials, fibrillation potentials and positive sharp waves. SEMG cannot identify the origin of the electrical signal when two or more muscles lie in close proximity to each other. The electrical signals in SEMG are often attenuated by intervening soft tissue, particularly when the active muscle is 10mm or more below the skin surface. Marked changes in the level of activity could occur with even small changes in the location of an electrode.

* * *

The majority of findings in the literature and opinion of the neurological society suggest that SEMG is unacceptable as a clinical tool in the diagnosis of neuromuscular disease and is inconclusive or inadequate as a clinical tool in the diagnosis of back pain. SEMG has been used as a tool in kinesiology and in the evaluation of movement disorders but has not been demonstrated to be superior to needle electromyography.

It is BCBSM's position that a SEMG is experimental or investigational for treatment of the Petitioner's condition and is not a covered benefit.

Commissioner's Review

The question of whether the Petitioner's SEMG is experimental or investigational was presented to an IRO for analysis as required by section 11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer in this matter is a doctor of dental medicine; a member of the American Dental Society, the Academy of General Dentistry, and the New England Dental Society; and in active practice. The IRO reviewer said:

Needle and fine wire electrography...are the gold standards of methodology assessing the neuro-physiologic characteristic of neuromuscular disease. Electrical signals are attenuated by soft tissue for muscles 10 mm below the

surface. A review of anatomy shows major muscles of mastication deep beyond the reach of surface electrodes including the internal pterygoid, external pterygoid and most of the temporal muscle as it inserts into the coronoid process. The deep muscles of the neck are too numerous to mention and surface electrodes are too non-specific to isolate any particular muscle. [Citations omitted]

Based on the current peer reviewed medical literature and the documentation submitted for review, the IRO reviewer concluded that the SEMG provided to the Petitioner is considered experimental or investigational and not the standard of care at this time.

The IRO reviewer's recommendation is based on extensive expertise and professional judgment and the Commissioner finds no reason to reject it. Therefore, the Commissioner accepts the IRO reviewer's conclusion that the Petitioner's SEMG on October 22, 2007, is experimental or investigational for treatment of her condition. Based on this conclusion, the Commissioner finds that the Petitioner's SEMG is not a covered benefit under her certificate.

V ORDER

Respondent BCBSM's April 17, 2008, final adverse determination is upheld. BCBSM is not required to provide coverage for the Petitioner's October 22, 2007, SEMG.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.